IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOEL BENITEZ,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**CIVIL ACTION NO. 3:17-cv-544**
TYSON FOODS, INC.,	§	
	§	
Defendant.	§	
	§	
	§	

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, Defendant, Tyson Foods, Inc. ("Tyson" or "Defendant"), hereby removes to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), Defendant sets forth the following "short and plain statement of the grounds for removal."

A. THE REMOVED CASE

1. The removed case is a civil action filed with the 298th Judicial District Court of Dallas County, Texas, on January 24, 2017, styled *Joel Benitez v. Tyson Foods, Inc.*, Cause No. DC-17-00883.

B. DOCUMENTS FROM REMOVED ACTION

2. Pursuant to Local Rule 81.1, Defendant attaches the following documents to this Notice of Removal:

(a) an index of all documents that clearly identifies each document and indicates the date the document was filed in state court;

(b) a copy of the docket sheet in the state court action; and

(c) each document filed in the state court action, except discovery material, with each document filed as a separate attachment.

Additionally, Defendant is simultaneously filing a separately signed Certificate of Interested Persons that complies with Local Rule 3.1(c).

C. REMOVAL IS TIMELY

3. Plaintiff, Joel Benitez ("Plaintiff" or "Benitez"), filed the present civil suit against Defendant in the 298th Judicial District Court of Dallas County, Texas ("the Dallas County court"), on January 24, 2017. Tyson was served with Plaintiff's Original Petition ("the Petition") on January 25, 2017. In the Original Petition, Plaintiff asserts negligence-based causes of action and claims for personal injury damages against Defendant.

4. Defendant has filed this Notice of Removal within thirty days after receiving papers indicating that the present lawsuit was filed in the Dallas County court, and subsequently became removable to the United States District Court for the Northern District of Texas. Defendant, therefore, contends that this removal is timely made.[1]

D. VENUE IS PROPER

5. The United States District Court for the Northern District of Texas, Dallas Division, is the proper venue for removal of the state court action pursuant to 28 U.S.C. § 1441(a) because the 298th Judicial District Court of Dallas County, Texas, is located within the jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division.

[1] *See*, 28 U.S.C. § 1446(b)(3).

E. DIVERSITY OF CITIZENSHIP EXISTS

6. This is a civil action that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

7. As admitted in the Petition, Plaintiff resides in Tarrant County, Texas.[2]

8. Tyson Foods, Inc. is a foreign corporation formed under the laws of the State of Delaware. Additionally, Springdale, Washington County, Arkansas is the primary place of business for Tyson. Pursuant to 28 U.S.C. § 1332(c)(1), Tyson is a not a citizen of the State of Texas.

9. Because Benitez is a resident of the State of Texas and Tyson is not, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

F. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

10. In his Petition, Benitez states that the damages sought "well exceed the minimum jurisdictional limits of the Court."[3] Additionally, Benitez alleges that he is seeking to recover at least eight (8) different categories of damages.[4] Although Benitez alleges only that he seeks damages that "well exceed the minimum jurisdictional limits" of the state court, Tyson would show that Benitez seeks damages in excess of $75,000.[5]

11. When a plaintiff has not pleaded a specific dollar amount and it is not otherwise apparent from the petition that damages exceed $75,000, the removing party must establish that the plaintiff's petition alleges a good faith claim in excess of the jurisdictional amount.[6] A defendant may make this showing either by: (1) demonstrating that it is facially apparent that the

[2] *See*, "Plaintiffs' (sic) Original Petition and Request for Disclosure" at p. 1.
[3] *See*, *id.* at ¶ 5.
[4] *See*, *id.* at ¶ 25-28.
[5] *See*, *id.* at ¶ 5.
[6] *St. Paul Mercury Idem. Co. v. Red Cab Co.*, 303 U.S. 283, 289, 58 S. Ct. 586, 590-91 (1938); *Gaitor v. Peninsular & Occidental Steamship Co.*, 287 F.2d 252-255 (5th Cir. 1961).

claims are likely above $75,000, or (2) by setting forth facts in controversy (by affidavit or other evidence) that support a finding of the requisite amount.[7]

12. In his Original Petition, Benitez alleges that he seeks to recover damages against Tyson for the following:

(a) Physical pain and suffering and mental anguish in the past;
(b) Physical pain and suffering and mental anguish in the future;
(c) Physical impairment in the past;
(d) Physical impairment in the future;
(e) Disfigurement in the past
(f) Disfigurement in the future;
(g) Medical expenses in the past;
(h) Medical expenses in the future;
(i) Lost wages in the past;
(j) Lost wages in the future;
(k) Punitive damages;
(l) Costs of court; and
(m) Pre-judgment and post-judgment interest.

13. In light of Benitez's long list of damages, the Original Petition, on its face, clearly indicates that Benitez seeks to recover damages in excess of $75,000.

14. Based on the aforementioned facts, the current state court action may be removed to the United States District Court for the Northern District of Texas, Dallas Division, by Defendant in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Northern District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy will exceed $75,000, exclusive of interest and costs.

G. FILING OF REMOVAL PAPERS

15. Pursuant to 28 U.S.C. § 1446(d), Tyson is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with the Clerk

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[7] *Simon v. Wal-Mart Stores, Inc.*, 193 F.3d 848 (5th Cir. 1999); *see also Garcia v. Koch Oil Co. of Texas, Inc*., 351 F.3d 636 (5th Cir. 2003).

of the 298th Judicial District Court of Dallas County, Texas, in which this action was originally commenced.

H. CONCLUSION

16. Defendant hereby removes the above-captioned action from the 298th Judicial District Court of Dallas County, Texas, and requests that further proceedings be conducted in the United States District Court for the Northern District of Texas, Dallas Division, as provided by law.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT TYSON FOODS, INC.

CERTIFICATE OF SERVICE

This is to certify that on the 24th day of February 2017, a true and correct copy of the foregoing has been forwarded to all counsel of record, as follows:

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